

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: David Coyle	Team: Team # 8	CCRB Case #: 200512466	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/25/2005 11:10 PM	Location of Incident: Howard Ave & Chauncey St	Precinct: 81	18 Mo. SOL 9/25/2006	EO SOL 9/25/2006	
Date/Time CV Reported Thu, 10/13/2005 10:40 AM	CV Reported At: IAB	How CV Reported: Fax	Date/Time Received at CCRB Mon, 10/17/2005 11:36 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cherry	01492	926676	NARCBBN
2. DT3 Carlos Naranjo	03890	916309	NARCBBN
3. POM Ronald Bannister	90574	905754	NARCBBN
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Salvator Bertocci	00000	892783	NARCBBN
2. POM Edwin Galan	05983	906293	NARCBBN
3. SGT Nemesio Vera	04118	916862	073 PCT
4. POM Angelo Cuzzo	91858	918580	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Cherry	Abuse: PO Patrick Cherry stopped and questioned § 87(2)(b)	
B.DT3 Carlos Naranjo	Abuse: Det. Carlos Naranjo threatened § 87(2)(b) with the use of force.	
C.DT3 Carlos Naranjo	Force: Det. Carlos Naranjo used pepper spray against § 87(2)(b)	
D.POM Ronald Bannister	Force: PO Ronald Bannister used physical force against § 87(2)(b)	
E. Officers	Abuse: Officers threatened § 87(2)(b) with the use of force.	

Synopsis

§ 87(2)(b) filed his complaint with IAB on October 13, 2005. The complaint was faxed to the CCRB on October 17, 2005. On March 25, 2005, § 87(2)(b) was at the corner of Howard Avenue and Chauncey Street in Brooklyn when he was stopped by PO Patrick Cherry (allegation A). PO Cherry was partnered with LT Bertocci. PO Cherry then searched § 87(2)(b). Det. Carlos Naranjo was also on the scene, and when § 87(2)(b) asked why he was being arrested, Det. Naranjo responded, "Shut the fuck up before I bust you in the mouth (allegation B)."

At the 73rd precinct, Det. Naranjo pepper sprayed § 87(2)(b) (allegation C). Later officers came to § 87(2)(b)'s holding cell and § 87(2)(b) told the officers that he was not going to allow them to finger print him. § 87(2)(b) was then escorted to see the desk sergeant. On his way to the desk § 87(2)(b) tried to spit on Det. Naranjo. PO Ronald Bannister then pushed § 87(2)(b) through a door, smacked him twice, and punched him in the shoulder (allegation D). Officers then put pepper spray in a mask and tried to put the mask on § 87(2)(b) (allegation E).

§ 87(2)(g)
[REDACTED]

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) old, black male who is 6'0" tall and weighs 230 pounds gave two statements regarding the incident. They include his initial complaint filed with IAB on October 13, 2005 (enclosure 4a-4c), and a phone statement from § 87(2)(b) on November 4, 2005 (enclosure 4f-4h). § 87(2)(b) His phone statement gave the most details and is his main statement.

On March 25, 2005 at approximately 11:10PM, § 87(2)(b) was standing on the corner of Chauncey Street and Howard Avenue. § 87(2)(b) was going to meet his friends § 87(2)(b) and § 87(2)(b) at a barbershop near 330 Chauncey Street. § 87(2)(b) stated that he did not stop to talk to anyone on his way to 330 Chauncey Street. An unmarked patrol car pulled up and PO1 jumped out of the car and asked § 87(2)(b) what he had in his hands (allegation A). In § 87(2)(b)'s initial complaint filed with IAB, § 87(2)(b) stated that officers stopped him for no reason when he was simply going to buy a sandwich. PO1 was a white male, 5'11", and had stocky build, black hair, and identified as Det. Cherry. § 87(2)(b) thought PO1 was his arresting officer PO Cherry. § 87(2)(b) told Det. Cherry that all he had in his hand was money. Det. Cherry then grabbed § 87(2)(b) put him on the hood of his patrol car, and told him to "shut up" (allegation A). Det. Cherry then searched § 87(2)(b). Det. Cherry found 23 dollars in § 87(2)(b)'s pocket, as well as cigarettes and breath mints, and 20 dollars in § 87(2)(b)'s mouth. Det. Cherry then released § 87(2)(b) and PO2 grabbed § 87(2)(b) and twisted his arm. PO2 was a black or Puerto Rican male, with short hair with waves, 5'9", 150lbs, in his late 30s, identified by § 87(2)(b) as Carlos, and identified by the CCRB as Det. Naranjo. § 87(2)(b) then asked the officers why he was being arrested and Det. Naranjo told him to "Shut the fuck up". § 87(2)(b) asked Det. Naranjo why he had to shut up and Det. Naranjo responded, "Shut the fuck up before I bust you in the mouth (allegation B)." In § 87(2)(b)'s initial complaint filed with IAB, § 87(2)(b) stated that an officer told him, "Shut up asshole, before I bust your fucking head (allegation B)."

Det. Naranjo told PO3 to go around the corner and see what § 87(2)(b) dropped. PO3 was a Puerto Rican or Italian male, 5'5", 200-230lbs, in his late 30s, chubby, and identified by the CCRB as Det. Galan. All officers were in plainclothes. Det. Galan returned and told Det. Naranjo to handcuff § 87(2)(b) because § 87(2)(b) had committed a felony. § 87(2)(b) was then thrown in the back of a police van. § 87(2)(b) began to get belligerent and kept asking the officers why he was being arrested. PO4 was also on

the scene. PO4 was a black male, 6'4"-6'5", 240 to 250lbs, in his late 30s, wore a baseball cap, and identified by the CCRB as Det. Bannister. § 87(2)(b) was then taken to the 73rd Precinct.

At the precinct, § 87(2)(b) was belligerent, loud, and boisterous and told the officers that he needed to make a phone call. The officers told § 87(2)(b) that they were not going to do anything for him because he was belligerent while in the police van. § 87(2)(b) was held against a wall by Det. Galan with his hands handcuffed behind his back and was told by an officer that they have something for him. Det. Naranjo then pepper sprayed § 87(2)(b) (allegation C). § 87(2)(b) stated that before he was pepper sprayed, he was being loud and boisterous. § 87(2)(b) had told the officers, "Homos suck my dick, fuck all yall, cause yall ain't nothing but corrupt police officers, once I make my phone call I'm going to tell the truth and you all are going to get in trouble." Det. Naranjo then threw § 87(2)(b) into a room with no windows. § 87(2)(b) stood in this room for 15 minutes. Det. Naranjo then came into the room and asked, "Are you good, are you alright, you still want to be a tough guy." § 87(2)(b) did not respond and Det. Naranjo told § 87(2)(b) "We shouldn't help you do no fucking things." Det. Naranjo then took § 87(2)(b) into another holding cell and washed his eyes out. § 87(2)(b) asked what he was being arrested for and officers told § 87(2)(b) that he would have to wait to see his arresting officer. § 87(2)(b) then fell asleep in the holding cell. § 87(2)(b) woke up to Det. Galan and Det. Bannister asking him if he was going to be finger printed. § 87(2)(b) told the officers that he was not going to allow them to fingerprint him until he knows why he was arrested. Det. Galan then pulled out a can of pepper spray and § 87(2)(b) complied. § 87(2)(b) was then taken to the desk sergeant. On his way to the desk sergeant, § 87(2)(b) saw Det. Naranjo and tried to spit on him. Det. Bannister then pushed § 87(2)(b) through a door, smacked him two times with an open hand, and punched him in the shoulder with a closed fist (allegation D). Det. Bannister also told § 87(2)(b) something to the effect of, "You want to be a tough ass." § 87(2)(b) was in handcuffs while Det. Bannister punched and smacked him. Det. Naranjo, Det. Galan, and Det. Cuozzo witnessed Det. Bannister hitting § 87(2)(b). PO5 was a white male, 5'6", 150lbs, with black hair, in his 40s, wore a leather jacket, and identified by the CCRB as Det. Cuozzo. § 87(2)(b) first identified this officer as having red hair. § 87(2)(b) stated that there were several other individuals in the holding cells, both male and female, who witnessed the misconduct. § 87(2)(b) stated that he was not injured beyond small bruises on his face from being smacked. Det. Cuozzo then came over to § 87(2)(b) and told him, "Ya we got something for your ass, you're going back to Sing Sing." § 87(2)(b) told Det. Cuozzo that he had never been to Sing Sing. The officers then put mace into a mask and tried to put the mask on § 87(2)(b) (allegation E). § 87(2)(b) was then put in a patrol car and taken to Central Booking.

§ 87(2)(b) stated that he was not around any drugs that day. The only person § 87(2)(b) spoke to that day was § 87(2)(b). § 87(2)(b) was outside the bodega where § 87(2)(b) was arrested. § 87(2)(b) smokes crack. § 87(2)(b) stated that it took him so long to file his complaint because he was embarrassed that he would have to leave his family again to go to prison. Once § 87(2)(b) found someone in prison that could write letters for him, § 87(2)(b) began to send out letters to various agencies. § 87(2)(b) needed money to mail the letters and after he got postage the prison held the letters until August.

In § 87(2)(b)'s initial complaint filed with IAB, § 87(2)(b) did not mention that he was brought back to a precinct and did not mention any of the additional allegations that he made in his phone statement to the CCRB.

Results of Investigation

Civilian Statements

§ 87(2)(b)

§ 87(2)(b) (a black male, § 87(2)(b) of age) provided a phone statement to the CCRB on April 4, 2006 (enclosure 5a).

On March 25, 2005, § 87(2)(b) was in a prisoner van when § 87(2)(b) was arrested and put in the van. § 87(2)(b) described § 87(2)(b) as a black male, 6'0", and over 200lbs. At that time, § 87(2)(b) was "really belligerent" and was resisting and using profanity. Officers had to use force in throwing § 87(2)(b) into the van, but § 87(2)(b) did not think that the force was excessive because § 87(2)(b) was resisting and being belligerent. In the van § 87(2)(b) and an officer were being macho and challenging each other to fight. § 87(2)(b) described the officer as a Hispanic male, 5'7", with a medium build. At

the precinct § 87(2)(b) was finger printed. When § 87(2)(b) returned to the holding cell area his eyes were tearing and he told § 87(2)(b) that he was pepper sprayed. § 87(2)(b) thought that both § 87(2)(b) and the Hispanic officer were using profanity, but he could not recall specifically what was said.

Attempts were made to locate other individuals appearing on the prisoner holding pen roster and letters were sent to § 87(2)(b), and § 87(2)(b). The only civilian witness statement obtained was § 87(2)(b)'s statement.

Officer Statements

Det. Patrick Cherry

Arrest Report

The narrative of the arrest report (enclosure 6a-6b) for § 87(2)(b) states, "At tpo deft was observed in possession of a quantity of crack cocaine with intent to sell it. Aforementioned crack cocaine is in excess of five hundred milligrams." The arrest report indicates that no force was used. § 87(2)(b) was charged with PL 220.16 (Criminal possession of a controlled substance in the 3rd degree) and PL 220.06 (Criminal possession of a controlled substance in the 5th degree).

CCRB Statement

Det. Patrick Cherry appeared at the CCRB on January 12, 2006 (enclosure 6c-6d). Det. Cherry is a white male, 6'0", 185lbs, with brown hair, and § 87(2)(b) old. On the date of the incident, March 25, 2005, Det. Cherry worked from 1533 to 2400 hours, was assigned to narcotics enforcement, and was partnered with LT Bertocci. Det. Cherry was not in uniform and was assigned to an unmarked patrol car. Det. Cherry's rank at the time of the incident was PO. Det. Cherry's memo book was with the DA on the date of his CCRB appearance.

On March 25, 2005 at approximately 11:10PM, Det. Cherry was in his patrol car with LT Bertocci when he observed a male counting something in his hand and having a conversation with another male in the vicinity of Saratoga and Chauncey. This male would later be identified as § 87(2)(b) § 87(2)(b) then began to walk west on Chauncey Street. Det. Cherry decided to keep § 87(2)(b) under observation, but had to go around the block because Chauncey Street is an eastbound street. At Howard and Chauncey Street, Det. Cherry pulled up to § 87(2)(b) and looked at him. § 87(2)(b) then looked back at Det. Cherry and threw a paper bag to the ground. Det. Cherry and LT Bertocci then emerged from their patrol car and Det. Cherry asked to speak to § 87(2)(b). When asked by the CCRB why he stopped § 87(2)(b) Det. Cherry stated, "Well he threw the bag down." When asked by the CCRB if there was anything about the bag that made him believe that there were drugs in the bag, Det. Cherry stated, "No. But it was odd. If it wasn't anything else it was littering." § 87(2)(b) then told Det. Cherry that he wasn't going to speak to him, and Det. Cherry responded that he wanted to talk with him. § 87(2)(b) then tried to walk through Det. Cherry. Det. Cherry stepped to the side, grabbed § 87(2)(b)'s arm and back and pushed § 87(2)(b) against a car to secure him until they found out what was in the bag. § 87(2)(b) was agitated and said something to the effect of, "Fuck you. You can't do this to me. I didn't do anything. I don't have to talk to you. You can't touch me." Det. Cherry and LT Bertocci had communicated to each other that LT Bertocci was going to go and check to see what was in the bag that § 87(2)(b) had thrown down. Det. Cherry told § 87(2)(b) to put his hands behind his back. Det. Cherry denied that he or any other officer told § 87(2)(b) to "shut the fuck up" or "shut the fuck up before I bust you in the mouth". § 87(2)(b) began to resist and Det. Cherry and LT Bertocci attempted to put § 87(2)(b) in handcuffs. § 87(2)(b) resisted being handcuffed and Det. Cherry got on the radio and called for the rest of the field team to respond. Det. Cherry and LT Bertocci then placed the handcuffs on § 87(2)(b) and Det. Cherry went to retrieve the bag. Det. Cherry picked up the bag, looked in it, and found a substantial amount of crack cocaine.

A prisoner van then arrived and Det. Cherry and other officers put § 87(2)(b) inside the van. While Det. Cherry and the officers were putting § 87(2)(b) in the van, § 87(2)(b) was resisting by putting his weight back and moving his head back in an attempt to strike the officers with the back of his head. Det. Cherry and officers then lifted § 87(2)(b) into the van. Det. Cherry denied that he or any other officer

pushed § 87(2)(b) into the van. § 87(2)(b) was then transported to the precinct. At the scene § 87(2)(b) was never searched, but Det. Cherry did frisk § 87(2)(b). Det. Cherry did not recall if he entered § 87(2)(b)'s pockets. Det. Cherry denied that he or any other officer looked in § 87(2)(b)'s mouth. Det. Cherry had no contact at the precinct with § 87(2)(b) beyond being present for § 87(2)(b)'s strip search authorized by LT Bertocci. Det. Cherry was not aware of § 87(2)(b) being pepper sprayed, slapped, pushed, or punched at the precinct. Det. Cherry denied that he used profanity or cursed at § 87(2)(b) and stated that he did not witness any officer use profanity or curse at § 87(2)(b). Det. Cherry could not recall which officers were on the scene, but stated that at the time his team members were PO Castle, PO Bozo, PO Gallan, and PO Cumerpatch.

LT Salvator Bertocci

Daily Activity Report

LT Bertocci's DAR (enclosure 7a) noted 2245 to 2255, "Entered vicinity of Chauncey and Saratoga." At 2255, "Regarding observations." At 2310, "One under."

CCRB Statement

LT Salvatore Bertocci appeared at the CCRB on January 31, 2006 (enclosure 7b-7c). LT Bertocci is a white male, 5'9", 270lbs, with brown hair, and § 87(2)(b) old. On the date of the incident, March 25, 2005, LT Bertocci was assigned to supervise a SNEU observation, partnered with Det. Cherry, and worked 1535 by 2400 hours. LT Bertocci was dressed in plainclothes and assigned an unmarked blue Chevy Trailblazer. § 87(2)(g)

LT Bertocci stated that Det. Cherry observed § 87(2)(b) look at something in his hand and then proceed westbound on Chauncey Street. LT Bertocci did not observe § 87(2)(b) but was informed by Det. Cherry that "this guy looks like he is up to no good. He looked like he had something." LT Bertocci could not recall why Det. Cherry thought § 87(2)(b) was up to "no good". LT Bertocci and Det. Cherry drove a little past § 87(2)(b) and stopped the car to get out. When § 87(2)(b) saw LT Bertocci get out of his vehicle, § 87(2)(b) threw a paper bag to the ground. LT Bertocci stated that he exited the vehicle to stop § 87(2)(b) and the reason why he was going to stop § 87(2)(b) was to question him. LT Bertocci added that they were in a narcotics prone location and they had reasonable cause to believe that § 87(2)(b) was involved in a narcotics transaction. When asked by the CCRB to articulate why he believed § 87(2)(b) was involved in a narcotics transaction, LT Bertocci stated that Det. Cherry had told him that he saw § 87(2)(b) doing something on the other side of the street. LT Bertocci stated that it was Det. Cherry's decision to approach § 87(2)(b) and not his own. LT Bertocci stated that he was going to question § 87(2)(b) regarding his prior actions. LT Bertocci stated that at the very least § 87(2)(b) was going to get a summons for littering. When asked if the dropping of the bag suggested something to him about what § 87(2)(b) was doing beforehand, LT Bertocci stated that it suggested that he was trying to discard something. LT Bertocci did not know if anything spilled out of the bag when it was dropped.

When the officers approached, § 87(2)(b) said, "Fuck you guys, get the fuck away from me", and pushed Det. Cherry. § 87(2)(b) also tried to strike LT Bertocci and might have hit LT Bertocci's arm and Det. Cherry's body. LT Bertocci then grabbed § 87(2)(b) by his arm and LT Bertocci and Det. Cherry pushed § 87(2)(b) against a car. § 87(2)(b) was then subdued and handcuffed. LT Bertocci restrained § 87(2)(b) because of § 87(2)(b)'s demeanor when they approached him, the fact that he dropped the paper bag, and Det. Cherry's earlier observations. At that point, § 87(2)(b) was handcuffed for safety reasons and was not under arrest. When asked by the CCRB what they had to do to subdue § 87(2)(b) LT Bertocci stated, "Use physical force." When asked to explain the physical force that was used LT Bertocci stated that he and Det. Cherry had to use their body weight to hold § 87(2)(b) against the car as they handcuffed him. LT Bertocci denied that any officer told § 87(2)(b) to "Shut the fuck up" or "Shut the fuck up before I bust you in the mouth". After § 87(2)(b) was handcuffed he was frisked by Det. Cherry. Det. Cherry then retrieved the brown paper bag that § 87(2)(b) had thrown down and found 21 zips of crack. § 87(2)(b) was then placed under arrest. LT Bertocci stated that before Det. Cherry found the crack § 87(2)(b) had not been searched and denied that he or Det. Cherry looked inside § 87(2)(b)'s mouth.

LT Bertocci could not recall the other officer that arrived on the scene. When asked by the CCRB if there was an officer on his team named “Carlos”, LT Bertocci identified Det. Naranjo as “Carlos”, but could not recall if Det. Naranjo arrived on the scene. LT Bertocci denied that § 87(2)(b) was thrown inside a prisoner van. LT Bertocci stated that he did not have any interaction with § 87(2)(b) at the precinct. LT Bertocci authorized a strip search of § 87(2)(b) but was not present for it. LT Bertocci stated that he was not aware that § 87(2)(b) was pepper sprayed at the precinct. When asked if he was aware that § 87(2)(b) spat at an officer at the precinct, LT Bertocci stated that he remembered § 87(2)(b) spitting at an officer, but could not remember which officer he spat at. The officer § 87(2)(b) spat on immediately went to the bathroom to wash off the spit, and another officer grabbed § 87(2)(b) s arms and turned him away so that he would not spit on anyone else. LT Bertocci did not know if § 87(2)(b) was shoved through a door, and did not witness any officer smack or punch § 87(2)(b). LT Bertocci did not know which officers were interacting with § 87(2)(b) at the precinct, but stated that the officers that would have been interacting with § 87(2)(b) would have been the officers who were assigned to the prisoner van. When asked if officers put pepper spray into a mask and attempted to put the mask on § 87(2)(b) LT Bertocci stated that he thought officers tried to put a mask on § 87(2)(b) so he wouldn’t spit anymore, but didn’t think officers put pepper spray in the mask. LT Bertocci was informed by officers that they were going to try to put the mask on § 87(2)(b) but he himself did not witness the officers try to put the mask on § 87(2)(b).

When asked if he would like to add anything to the record, LT Bertocci stated, “Other than the fact that he is a career criminal and is currently serving two years for this arrest. And he’s a violent felony firearms offender.”

Det. Carlos Naranjo

CCRB Statement

On June 9, 2006, Det. Carlos Naranjo appeared at the CCRB (enclosure 8a-8c). Det. Naranjo is a Hispanic male, 6’1”, 190lbs, with brown hair, and § 87(2)(b) old. On the date of the incident, March 25, 2005, Det. Naranjo worked 1745 by 0200 hours, was assigned to the chase car, and dressed in plainclothes. Det. Naranjo was not sure who he was partnered with, but thought that he was working with Det. Cuozzo. Det. Naranjo did not bring his DAR to his CCRB interview. § 87(2)(g)

When Det. Naranjo arrived at the scene § 87(2)(b) was rear cuffed. Det. Naranjo thought that he had received a radio transmission earlier relaying § 87(2)(b) s physical description. Both Det. Cherry and LT Bertocci were behind § 87(2)(b) holding his hands and § 87(2)(b) was acting very irate cursing, foaming at the mouth, and spitting at the officers. Det. Naranjo tried to escort § 87(2)(b) into the prisoner van, but § 87(2)(b) refused. § 87(2)(b) was resisting by pulling back as the officers tried to escort him to the van. Det. Naranjo and two or three other officers then pulled § 87(2)(b) inside the prisoner van by holding his feet and arms. Det. Naranjo could not recall which officers were holding § 87(2)(b) s feet and which officers were holding his arms. The officers that assisted Det. Naranjo were LT Bertocci, Det. Cherry, and Det. Couzzo. Det. Naranjo was not sure who was operating the prisoner van. § 87(2)(b) continued to scream and tried to kick at the officers. Once inside the van § 87(2)(b) was kicking the van. It took Det. Naranjo and another officer to push the door shut because § 87(2)(b) was kicking the door. Det. Naranjo did not recall seeing the drugs that were recovered. Det. Naranjo denied that he or any other officer told § 87(2)(b) to “shut the fuck up”, or “shut the fuck up before I bust you in the mouth.” Det. Naranjo denied that any officer cursed or used profanity, or used a threat of force to get § 87(2)(b) into the van. Det. Naranjo returned to his assigned vehicle and put over a radio transmission to the prisoner van telling them not to remove the prisoners until the whole team was there because he thought that § 87(2)(b) might continue to struggle when released from the van.

Det. Naranjo arrived at the precinct and began to take the prisoners out of the prisoner van. The officers left § 87(2)(b) for last because they knew they would have problems with § 87(2)(b). When Det. Naranjo and the other officers took § 87(2)(b) out of the van, § 87(2)(b) was screaming and cursing. Det. Naranjo did not know which officers assisted in taking § 87(2)(b) out of the van, but stated that it would have been the members of his field team. A copy of the tactical plan was shown to Det. Naranjo and Det. Naranjo confirmed that it would have been the six officers on the tactical plan (Det. Naranjo, Det. Cuozzo, Det. Banister, Det. Galan, Det. Cherry, and LT Bertocci) that would have been interacting with § 87(2)(b).

Det. Naranjo told § 87(2)(b) that they would have to EDP him if he continued to yell while in the precinct. § 87(2)(b) continued to curse and spit at the officers.

Once inside the stationhouse, Det. Naranjo and other officers brought § 87(2)(b) to the cell area. In the cell area, § 87(2)(b) continued to be non-compliant telling the officers, "I'm not doing nothing. I'm not getting finger printed." § 87(2)(b) also refused to be searched and was saying things like, "You mother fuckers if I catch you I am going to beat the balls out of you. Take these cuffs off of me, watch what is going to happen to me." At one point, the handcuffs were taken off of § 87(2)(b) in the holding cell area to search him and § 87(2)(b) began to punch the walls. The officers then attempted to handcuff § 87(2)(b) again, and § 87(2)(b) resisted by flailing his arms, spitting, and saying things like, "You mother fuckers you come in here and search me and put your hands on me." At that point, Det. Naranjo took out his pepper spray and told § 87(2)(b) something to the effect of, "Listen if you try to attack one of the officers you are going to get maced." § 87(2)(b) then calmed down a little, but continued to curse and tell the officers that they arrested him for no reason. Det. Bannister and Det. Galan were then able to handcuff § 87(2)(b). Det. Naranjo told § 87(2)(b) that if he kept it up they would call ESU. Det. Naranjo denied that at any time he or another officer used pepper spray against § 87(2)(b). Det. Naranjo did not recall an officer saying, "We shouldn't help you do no fucking things. You still want to be a tough guy."

Det. Naranjo explained that a strip search was authorized, but was never conducted because they were worried about § 87(2)(b) attacking an officer. Det. Naranjo explained that his duties when assigned to the chase care are to help with the paper work and then go back to his office. Det. Naranjo explained that the officers assigned to the prisoner van would continue to interact with the prisoner and take him out of his cell to be transported to central booking. Det. Naranjo did not recall an officer pushing, punching, or slapping § 87(2)(b). Det. Naranjo denied that he heard an officer say, "We got something for your ass. You are going back to Sing Sing." When asked if there is a procedure to prevent prisoners from spitting, Det. Naranjo explained that you could put a surgical mask on the prisoner that EMS gives you. Det. Naranjo denied that a mask was ever put on § 87(2)(b). Det. Naranjo did not recall any discussion about putting a mask on § 87(2)(b). Det. Naranjo denied that officers put pepper spray in a mask and tried to put the mask on § 87(2)(b).

Det. Naranjo confirmed that officers call him "Carlos". Det. Naranjo denied that at any time he or any officer cursed or used profanity.

Det. Angelo Cuozzo

DAR

Det. Cuozzo's DAR (enclosure 9a) from 2110 to 2120 hours notes, "ERT Chauncey and Howard." From 2120 to 2310 hours, "2 under."

CCRB Statement

On July 21, 2006, Det. Angelo Cuozzo appeared at the CCRB (enclosure 9b-9c). Det. Cuozzo is a white male, 5'11", 220lbs, with brown hair, and § 87(2)(b) old. On the date of the incident, March 25, 2005, Det. Cuozzo worked 1733 by 0220 hours. Det. Cuozzo was part of a buy and bust operation, was assigned to the OP car, partnered with Det. Naranjo, dressed in plainclothes, and assigned to an unmarked black Pathfinder. Det. Cuozzo's rank at the time of the incident was PO. § 87(2)(g)

Det. Cuozzo and Det. Naranjo observed an individual who would later be identified as § 87(2)(b) pass what looked to be narcotics to another individual in the vicinity of Chauncey and Howard. Det. Cuozzo stated that what § 87(2)(b) was passing appeared to be crack cocaine. Det. Cuozzo could not recall how the crack was packaged. Det. Cuozzo and Det. Naranjo then put over a description and the field team moved in to apprehend § 87(2)(b). § 87(2)(b) then walked off the corner that he was at and out of sight of Det. Cuozzo and Det. Naranjo. Det. Cuozzo explained that he and Det. Naranjo were parked approximately 20 feet away from where § 87(2)(b) made his transaction.

When Det. Cuozzo and Det. Naranjo pulled up at the scene of § 87(2)(b)'s apprehension, § 87(2)(b) was in handcuffs. Det. Cuozzo knew that Det. Cherry was § 87(2)(b)'s arresting officer, but could not independently recall who was interacting with § 87(2)(b). Det. Cuozzo could not recall if he or Det.

Naranjo exited their vehicle. Det. Cuozzo could not remember which officer was holding § 87(2)(b) but remembered that § 87(2)(b) tried to pull away from an officer by twisting his body. Det. Cuozzo could not see how the officers put § 87(2)(b) in the prisoner van because he was in front of the van and § 87(2)(b) and the officers were behind the van. To Det. Cuozzo's recollection he and Det. Naranjo did not assist in putting § 87(2)(b) in the prisoner van. Det. Cuozzo denied that an officer said, "Shut the fuck up" or "Shut the fuck up before I bust you in the mouth." Det. Cuozzo was not aware of § 87(2)(b)'s demeanor once in the prisoner van.

The officers then stayed out in the field to conduct other sets and then returned to the precinct. Det. Cuozzo could not recall what he did once he returned to the precinct, but explained that usually the entire field team assists in searching the prisoners and taking off their handcuffs. At some point while officers were getting ready to take § 87(2)(b) out of the holding cell area to print § 87(2)(b) Det. Cuozzo walked by and observed that as § 87(2)(b) was crossing the desk area he was kicking, trying to pull away, screaming, and spitting. Det. Cuozzo was not sure if § 87(2)(b) spit on anyone particular. Det. Cuozzo could not remember which officers were with § 87(2)(b) and could not remember if there was more than one officer that was escorting § 87(2)(b). Det. Cuozzo could not remember what the officers did to try to get § 87(2)(b) to calm down. To Det. Cuozzo's knowledge § 87(2)(b) was never pushed, punched, or smacked. Det. Cuozzo was not aware of § 87(2)(b) being pepper sprayed while inside the precinct. Det. Cuozzo denied that he heard an officer say, "You want to be a tough ass", "We shouldn't help you do no fucking things", "I got something for your ass, you are going back to Sing Sing", or curse or use profanity. Det. Cuozzo was not aware of an officer pulling out pepper spray and threatening to pepper spray § 87(2)(b). Det. Cuozzo stated that usually a surgical mask is used to try to prevent prisoners from spitting, but Det. Cuozzo did not recall if a mask was used on § 87(2)(b). Det. Cuozzo denied that officers put pepper spray into a mask, and denied that any one from his command has ever put pepper spray into a mask to use on a prisoner.

Det. Edwin Galan

Memo Book

Det. Galan's memo book (enclosure 11a-11b) from 2110 to 2120 notes, "Ert Chauncey and Howard." From 2120 to 2310, "At above two perps in van."

CCRB Statement

On May 19, 2006, Det. Edwin Galan appeared at the CCRB (enclosure 11c-11d). Det. Galan is a Hispanic male, 5'8", 180lbs, with black hair, and § 87(2)(b) old. On the date of the incident, March 25, 2005, Det. Galan worked 1733 by 0200 hours, was assigned to the prisoner van, dressed in plainclothes, and was partnered with Det. Bannister. Det. Galan's rank at the time of the incident was PO.

Det. Galan did not recall the incident. Det. Galan explained that there has been times when pepper spray has been utilized while in the precinct. Det. Galan did not remember any instances of pepper spray being utilized on March 25, 2005. Det. Galan did not recall ever using pepper spray himself while inside of a precinct, and could not recall any specific members from his team using pepper spray while inside of a precinct. When asked if there are any procedures to keep prisoners from spitting, Det. Galan explained that a hospital mask could be utilized, but has never seen an officer utilize a mask on a prisoner. Det. Galan denied that he ever saw an officer put pepper spray into a mask and threaten to put it on a prisoner.

Det. Ronald Bannister

CCRB Statement

On June 15, 2006, Det. Ronald Bannister appeared at the CCRB (enclosure 10a-10b). Det. Bannister is a black male, 6'2", 260lbs, with black hair, and § 87(2)(b) old. Det. Bannister did not bring his memo book to his CCRB interview and did not know if he was on duty the day of the incident. Det. Bannister had no recollection of interacting with a § 87(2)(b). The CCRB showed Det. Bannister a copy of the tactical plan. As indicated by the tactical plan, Det. Bannister worked 1745 by 0200 hours, was

assigned to the prisoner van, dressed in plainclothes, and partnered with Det. Galan. Det. Bannister's rank at the time of the incident was PO.

After reviewing the tactical plan, Det. Bannister still had no recollection of the incident. Det. Bannister did not recall an officer using pepper spray on a prisoner in the precinct. Det. Bannister stated that he has never witnessed an officer use pepper spray while inside the confines of a stationhouse. Det. Bannister explained that if they had a hospital mask they could put it on a spitting prisoner. Det. Bannister explained that they would inform the supervisor and call EMS and EMS would put the mask on the prisoner. Det. Bannister stated that they do not have any masks on hand at the precinct and would have to call EMS to obtain a mask. Det. Bannister had no recollection of officers putting pepper spray into a mask and trying to put it on a prisoner. Det. Bannister did not recall pushing, slapping, and punching a prisoner while in the precinct.

Sgt. Nemesio Vera

Memo Book

Sgt. Vera's memo book (enclosure 12a-12b) at 2305 hours notes, "PFD at 73rd Precinct. Assigned D.O." At 0802, "EOT."

CCRB Statement

On April 21, 2006, Sgt. Vera appeared at the CCRB (enclosure 12c-12d). Sgt. Vera is a Hispanic male, 5'8", 170lbs, with black hair, and § 87(2)(b) old. On the date of the incident, 3/25/05, Sgt. Vera was the desk officer and worked 2305 by 0802 hours.

Sgt. Vera had no recollection of the incident. When asked the procedure when a prisoner spits at an officer, Sgt. Vera stated that officers would sustain the prisoner by putting handcuffs on him. When asked if a mask would ever be put on a prisoner to prevent them from spitting, Sgt. Vera stated that a painter's mask could be put on a prisoner and officers would need their supervisor's permission before putting the mask on their prisoner.

Police Documents

Tactical Plan

PO Cherry, LT Bertocci, Det. Naranjo, PO Cuozzo, PO Bannister and PO Galan appear on the tactical plan (enclosure 13a).

Felony Narcotics Possession Fact Sheet

The Felony Narcotics Possession Fact sheet for § 87(2)(b) (enclosure 13b) notes that the arrest date and time were March 25, 2005 at 2310 hours. The basis for the stop/search of the defendant was, "Deft was observed in possession of crack cocaine in public view." The type of drug recovered was crack cocaine and the quantity was eight zip lock bags. The "A/O" recovered the drugs. The drugs were recovered from the ground. Upon arrest the defendant said, "I just sell to these bitches."

Command Log

The command log from March 26, 2005 (enclosure 13c) at 0045 hours noted that PO Cherry was the arresting officer for § 87(2)(b) and for § 87(2)(b). Both § 87(2)(b) and § 87(2)(b) were listed as having been strip-searched.

Property Voucher

Two property vouchers (enclosure 13d-13e) were prepared for § 87(2)(b)'s arrest. Property voucher number § 87(2)(b) showed that 1 twenty-dollar bill and 3 one-dollar bills were vouchered.

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO1 as a white male, 5'11", with a stocky build and black hair. § 87(2)(b) also thought that PO1 was his arresting officer PO Cherry. Det. Cherry is a white male, 6'0", 185lbs, with brown hair, and was § 87(2)(b)'s arresting officer. Det. Cherry also admitted to being the officer that initially stopped § 87(2)(b). This information combined with § 87(2)(b)'s description identifies PO1 as Det. Cherry. § 87(2)(g) § 87(2)(b) identified PO2 as a black or Puerto Rican male, with short hair with waves, 5'9", 150lbs, in his late 30s, and identified by name as Carlos. Det. Naranjo is a Hispanic male, 6'1", 190lbs, § 87(2)(b) old, with brown hair. Det. Naranjo admitted that officers from his team call him Carlos. § 87(2)(g)

§ 87(2)(b) identified PO3 as a Puerto Rican or Italian male, 5'5", 200-230lbs, in his late 30s, and chubby. Det. Galan is a Hispanic male, 5'8", 180lbs, and § 87(2)(b) of age. Det. Naranjo stated that Det. Galan was with him and Det. Bannister when they tried to bring § 87(2)(b) out of the holding cell area, § 87(2)(g)

§ 87(2)(b) identified PO4 as a black male, 6'4"-6'5", 240 to 250lbs, in his late 30s, who wore a baseball cap. Det. Bannister is a black male, 6'2", 260lbs, and § 87(2)(b) old. According to the tactical plan, Det. Bannister was the only black male on the field team that day. § 87(2)(g)

§ 87(2)(b) identified PO5 as a white male, 5'6", 150lbs, with black hair, in his 40s, who wore a leather jacket. Det. Cuozzo is a white male, 5'11", 220lbs, with brown hair, and § 87(2)(b) old. Det. Cuozzo stated that he was present when § 87(2)(b) spit in front of the desk area, corroborating § 87(2)(b)'s account of who was present when he was led before the desk. § 87(2)(g)

Undisputed Facts

It is undisputed that § 87(2)(b) was being belligerent throughout the incident. It is undisputed that § 87(2)(b) was non-compliant when officers initially came to finger print him. It is undisputed that an officer threatened to pepper spray § 87(2)(b). It is undisputed that § 87(2)(b) spit as he was led before the front desk area.

Disputed Facts

§ 87(2)(g)

Credibility

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(g)

Det. Cherry, LT Bertocci, Det. Naranjo, Det. Cuozzo, Det. Galan, Det. Bannister, Sgt. Vera

§ 87(2)(g)

Determination of Facts

§ 87(2)(g)

§ 87(2)(g)

As Barry Kamins states in New York Search and Seizure, “When an individual abandons an item or personal property, he relinquishes any reasonable expectation of privacy in the discarded item. As a result, the police may seize the property without complying with Fourth Amendment standards...As one court succinctly stated: ‘Where a defendant abandons property, there is no search and seizure (enclosure 1a).’”

Allegation A: PO Patrick Cherry stopped and questioned § 87(2)(b)

§ 87(2)(b) stated that he was stopped by PO1 when he was simply going to buy a sandwich. Det. Cherry stated that he had observed § 87(2)(b) counting something in his hand and having a conversation with another male in the vicinity of Saratoga and Chauncey. Det. Cherry went on to explain that when he pulled up next to § 87(2)(b) § 87(2)(b) threw a paper bag to the ground. Det. Cherry stated that at that point he exited his vehicle to stop § 87(2)(b) and § 87(2)(b) tried to walk through him. § 87(2)(g)

In New York Search and Seizure, Barry Kamins states, “When a defendant abandons property upon the approach of an officer, under circumstances that lead the officer to believe the property was stolen or is contraband, and, in addition, the defendant flees, the officer will have probable

cause to arrest (enclosure 1b).” § 87(2)(g)

Allegation B: Det. Carlos Naranjo threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that PO2 threatened him with the use of force at the scene of his arrest. Det. Naranjo denied the allegation § 87(2)(g)

In § 87(2)(b)'s statement to the CCRB, § 87(2)(b) stated that PO2 said, “Shut the fuck up before I bust you in the mouth”, while in his initial complaint filed with IAB, § 87(2)(b) stated that an officer told him, “Shut up asshole, before I bust your fucking head.” § 87(2)(g)

Allegation C: Det. Carlos Naranjo used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that at the precinct he was being belligerent, loud, and boisterous before he was held against a wall by PO3 and pepper sprayed by PO2. Det. Naranjo denied the allegation § 87(2)(g)

As stated in the NYPD Police Academy Curriculum’s scale of escalating force, pepper spray may be used in response to a “Threatened or potential physical assault likely to cause physical injury (enclosure 1c).” § 87(2)(g)

Allegation D: PO Ronald Bannister used physical force against § 87(2)(b)

§ 87(2)(b) stated that PO4 pushed him through a door, smacked him two times, and punched him in the shoulder, after he had tried to spit on PO2. Det. Bannister did not recall the incident and did not recall pushing, smacking, or punching a prisoner, § 87(2)(g)

§ 87(2)(b) also claimed that there were civilians in the holding cells that witnessed Det. Bannister using force against him, but § 87(2)(b) did not mention seeing any force used against § 87(2)(b) in the precinct. § 87(2)(b) also does not appear to have any visible injuries in his arrest photo. § 87(2)(g)

Allegation E: Officers threatened § 87(2)(b) with the use of force.

§ 87(2)(b) stated that the officers put mace into a mask and tried to put the mask on him. All of the officers denied the allegation, § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: